



**ARIZONA SUPREME COURT  
ORAL ARGUMENT CASE SUMMARY**



**STATE OF ARIZONA v. BASILIO SOLIZ  
CR-09-0087-PR**

**PARTIES AND COUNSEL:**

*Petitioner:* The State of Arizona, represented by Assistant Attorneys General Michael T. O'Toole and Julie Done

*Respondent:* Basilio Soliz, represented by Sharmila Roy

**FACTS:**

In March 2006, Maricopa County Sheriff's deputies executed an arrest warrant for Soliz at a Guadalupe residence. After the deputies made contact with Soliz, he tried to shut the door and run back inside. The deputies arrested him inside the house, and saw a methamphetamine pipe and several baggies with drug residue in plain sight. The State charged Soliz with possession of methamphetamine for sale.

Before trial, the State alleged six historical prior felony convictions that occurred between 1984 and 2002. The State also alleged that Soliz was a serious drug offender, and that there were aggravating circumstances other than his priors, noting his time in prison, his previous prior offenses, and his continued drug use as factors. At Soliz's settlement conference, the State told the trial court and Soliz, "first and foremost, I'm not going to be filing any allegation for serious drug offender." The State discussed its plea offer with Soliz, and told him, "if you were to go to trial on this case, I would allege two historicals, meaning you have a sentencing range within a class 1 of 10.5 to 35 [years] and a midrange of 15.75" years. Soliz rejected the plea and elected to proceed to trial.

After a full trial, the court told the nine jurors that "[o]nly eight of you will deliberate," and the clerk selected juror number one as the alternate juror. The court told the juror, "[Y]ou are not excused at this time. If for some reason one of the sitting jurors cannot continue to deliberate for some reason, you would be substituted in for that juror." The next morning, the jury returned a guilty verdict against Soliz. According to the transcript, the court polled the jurors, including the alternate, juror number one. Neither the State nor Soliz objected to the presence of nine jurors instead of eight.

At sentencing, the State noted "the defendant has an extensive criminal history and tak[ing] that into consideration and I – because I did not go forward with the aggravation hearing,

I would request that the presumptive term be imposed.” The court agreed, and sentenced Soliz to the presumptive term of 10 years with credit for 253 days of presentence incarceration. Soliz appealed, arguing that he was constitutionally entitled to a 12-person jury, and that the alternate juror improperly participated in the jury’s deliberations.

In a memorandum decision filed March 10, 2009, the court of appeals reversed and remanded for a new trial because Soliz had a fundamental right to be tried by a jury of twelve pursuant to Ariz. Const. art. 2 § 23 (“Juries in criminal cases in which a sentence of death or imprisonment for thirty years or more is authorized by law shall consist of twelve persons.”).

On April 15, 2009, the State filed its petition for review in this Court.

### **ISSUE:**

Although Appellant could have technically received a sentence of more than 30 years if the State proved his prior felony convictions, Appellant did not object to proceeding with less than 12 jurors. After Appellant was convicted, the State declined to prove the prior convictions and Appellant was sentenced to the presumptive 10-year term of imprisonment. Did the court of appeals err when it concluded that the empanelment of less than 12 jurors was fundamental, prejudicial error?

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